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10/006,242	12/10/2001	Alexander James Hinchliffe	01.130.01	9945

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Zilka-Kotab, PC
P.O. Box 721120
San Jose, CA 95172-1120

EXAMINER

TIV, BACKHEAN

ART UNIT PAPER NUMBER

2151

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/006,242

Applicant(s)

HINCHLIFFE ET AL.

Examiner

Backhean Tiv

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-11,13-21 and 23-32 is/are pending in the application.
- 4a) Of the above claim(s) 2,12 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-11,13-21 and 23-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Claims 1,3-11,13-21,23-32 are pending in this application. Claims 2,12,22 have been cancelled. Claims 31,32 are new claims. This is a response to the amendment/Remarks filed on 12/12/05.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2-10 are rejected under 35 U.S.C. 101 because claims 2-10 are not limited to tangible embodiments. In view of Applicant's disclosure, specification page 2-13, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments and intangible embodiments. As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 32 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claim limitation recites, "wherein each destination computer stores said priority data thereof specifying said priority level associated with said destination computer and

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communicates said priority data thereof with said source computer in response to a first connection with said source computer", in particular the specification does not describes the destination computers communicating the priority to the source computer in response to a first connection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,3-11,13-20,31,32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "substantially" in claims 1,3-11,13-20,31,32 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-5,11,13-15,21, 23-25,31,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,035,423 issued to Hodges et al.(Hodges) in view of US Patent 6,484,943 issued to Reber et al.(Reber) in further view of US Patent 6,557,111 issued to Theimer et al.(Theimer).

As per claim 1,11,21, Hodges teaches a computer program product for controlling a source computer to update out-of-date data stored by a plurality of destination computers with updated data stored by said source computer using a computer network connecting said source computer to said plurality of destination computers, said computer program product comprising(Abstract, Figs.1-12; sending updated files to multiple computers for executing):

generating code operable to generate a plurality of push update tasks driven by said source computer, each push update task serving to transfer said updated data from said source computer to a corresponding group of destination computers via said computer network(Abstract, Figs.1-12, col.4, lines 45-59; antivirus software updates are pushed from a central server to local computers);

and execution code operable to sequentially execute said sequence of push update tasks upon said source computer to transfer said updated data from said source computer to said plurality of destination computers via said computer network(Abstract, Figs.1-12, col.4, lines 45-59, col.5, lines 30-33; antivirus software is installed on the local computers); and pushing data to computers(Abstract, Figs.1-12, col.4, lines 45-59; antivirus software updates are pushed from a central server to local computers).

Hodges however, does not explicitly teach associating code operable to associate priority data specifying a priority level with each destination computer; to establishing code operable in dependence upon said priority data to establish a plurality of groups of destination computers such that destination computers within a group of destination computers share a common priority level; and communication between server and computers are based on a certain priority level.

Reber teaches associating code operable to associate priority data specifying a priority level with each destination computer(Fig.2, col.2, lines 45-64; a priority level is assigned to each computer);

to establishing code operable in dependence upon said priority data to establish a plurality of groups of destination computers such that destination computers within a group of destination computers share a common priority level(Fig.2, col.2, lines 45-64; certain computers are assigned different priority, eg. Priority 1, or priority 2);

and communication between server and computers are based on a certain priority level (col.4, lines 39-44; communication between server and computers are established by priority value).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Hodges of pushing updates to computers to assign priority to computers as taught by Reber in order to push updates to multiple computers based on priority to provide multiple computers with information.

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Hodges and Reber in order to provide a method

to prioritize interaction with computer network resources based on priority levels(Reber, col.1, lines 65-67).

Hodges in view of Reber does not explicitly teach wherein said source computer transfers said updated data to a group of destination computers using multicast messages that are addressed to substantially all destination computers within said group of destination computers.

Theimer teaches the use of multicast communication updates to propagate updates to through the network to different computers on the network(Abstract, Claims 1-20, col.3, lines 1-16).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Hodges in view of Reber to explicitly teach using multicast communication updates to updates computers on the network as taught by Theimer and suggested by Hodges, Abstract, Figs1-12, col.4, lines 45-59 of pushing updates to different computers in order to perform updates of different computers at the same time(Theimer, col.3, lines 39-col.4, lines 65, Hodges, Hodges, Abstract, Figs1-12, col.4, lines 45-59).

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Hodges, Reber, and Theimer in order to provide a system to send updates to multiple computers at the same time (Theimer, col.3, lines 39-col.4, lines 65, Hodges, Hodges, Abstract, Figs1-12, col.4, lines 45-59).

As per claim 3, 13,23 wherein said computer network uses an IP transmission protocol and said multicast messages are IP multicast messages(Hodges, Figs.1-12; updates are pushed based on IP address).

As per claim 4, 14,24 wherein said updated data is one or more of: malware definition data and a malware scanner program(Hodges, Abstract, col.3, lines 24-38, col.4, lines 26-30; antivirus updates protects against viruses).

As per claim 5,15,25, wherein said malware includes one or more of computer viruses, worms, Trojans, banned files, banned words and banned images (Hodges, Abstract, col.3, lines 24-38, col.4, lines 26-30; antivirus updates protects against viruses).

As per claim 31, a computer program product as claimed in claim 1, wherein said multicast messages that are addressed to said destination computers within said group of destination computers include a shared push update task(Theimer, col.3, lines 39-col.4, lines 65, Hodges, Hodges, Abstract, Figs1-12, col.4, lines 45-59). Motivation to combine set forth in claim 1.

As per claim 32, a computer program product as claimed in claim 1, wherein each destination computer stores said priority data thereof specifying said priority level associated with said destination computer and communicates said priority data thereof with said source computer in response to a first connection with said source computer(Hodges, Abstract, Figs.1-12, col.4, lines 45-59, Reber Fig.2, col.2, lines 45-64). Motivation to combine set forth in claim 1.

Claims 6-8,16-18,26-28, are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,035,423 issued to Hodges et al.(Hodges) in view of US Patent 6,484,943 issued to Reber et al.(Reber) in further view of US Patent 6,557,111 issued to Theimer et al.(Theimer) in further view of US Patent 6,466,932 issued to Dennis et al.(Dennis)

Hodges in view of Reber in further view of Theimer teaches all the limitations of claims 1,11,21, however does not teach as per claim 6,16,26, splitting a group of computer into different groups.

Dennis teaches splitting a group of computer into different groups(col.13, lines 32-35).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Hodges in view of Reber in further view of Theimer to split a group into different groups as taught by Dennis in order to apply certain policy or send certain updates to different groups.

On ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Hodges, Reber, Theimer, and Dennis in order to provide a method to split a group into different groups to transfer different updates.

As per claim 7,17,27, wherein said splitting allocates destination computers sharing a common network portion of said computer network to a common group(Dennis, col.13, lines 32-35; splitting a group of computers into Ae and A).

As per claim 8,18,28, wherein within said group of destination computers sharing a common priority level and being split, destination computers connected and not

logged into said computer network are grouped together and split from and treated as having a lower priority level than destination computers connected and logged into said computer network(Reber, Fig.2, col.2, lines 45-64; certain computers are assigned different priority). Motivation to combine set forth in claim 9.

Claims 9,19,29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,035,423 issued to Hodges et al.(Hodges) in view of US Patent 6,484,943 issued to Reber et al.(Reber) in further view of US Patent 6,557,111 issued to Theimer et al.(Theimer) in further view of US Patent 6,907,460 issued to Loguinov et al.(Loguinov).

Hodges in view of Reber in further view of Theimer teaches all the limitations of claims 1,11,21, however does not teach as per claim 9,19,29, wherein if a push update task has not completed updating all destination computers within said corresponding group of destination computers within a timeout period, then said push update task is terminated and updating of destination computers not completed is added to a subsequent push update task.

Loguinov teaches wherein if a push update task has not completed updating all destination computers within said corresponding group of destination computers within a timeout period, then said push update task is terminated and updating of destination computers not completed is added to a subsequent push update task(col.6, lines 30-43,64-67; calculating timeout and retransmitting data).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Hodges in view of Reberin further view of Theimer of updating computers based on priority to have a time out period and retransmitting of data as taught by Loguinov in order to efficiently send data from a server to multiple computers.

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Hodges, Reber, Theimer, and Loguinov in order to provide a method to set a certain time of transmission of data and retransmitting if there is a failed transmission.

Claims 10,20,30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,035,423 issued to Hodges et al.(Hodges) in view of US Patent 6,484,943 issued to Reber et al.(Reber) in further view of US Patent 6,557,111 issued to Theimer et al.(Theimer) in further view of US Patent 6,907,460 issued to Loguinov et al.(Loguinov) in further view of US Patent 6,704,768 issued to Zombek et al.(Zombek).

Hodges in view of Reber in further view of Theimer in further view of Loguinov teaches all the limitations of claims 9,19,29, however does not teach as per claim 10,20,30, wherein a user alert message is generated identifying those destination computers for which updating was not completed.

Zombek teaches wherein a user alert message is generated identifying those destination computers for which updating was not completed(col.42, lines 31-40; a user's application is alerted that there was a failed transmission).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Hodges in view of Reber in further view of Theimer in further view of Loguinov to alert the user when there is a failed transmission as taught by Zombek in order for the user to know if there was a successful transmission of data.

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Hodges, Reber, Loguinov, Theimer, and Zombek in order to provide a method of informing the user when there are failed data transmission.

Response to Arguments

Applicant's arguments filed 12/12/05 have been fully considered but they are not persuasive.

The applicant has amended claim 1 to include "a computer product embodied on a tangible computer readable medium", however the dependant claims were not amended and are non-statutory.

The applicant has also argued that the combination of Hodges in view of Reber does not teach assigning priority to computers. The applicant is reminded that arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Reber, Fig.2, col.2, lines 45-67, explicitly teaches that priority levels are assigned to a specific computer address. One

ordinary skill in the art at the time of the invention can interpret computer address as either MAC or IP address of the computer. It is well known in the art that each computer has a specific MAC and IP address. A MAC address is a hardware address that uniquely identifies each node of a network. An IP address is a 32 bit binary number that uniquely identifies a computer connected to the Internet to other computers connected to the Internet. Hodges, Abstract, Figs.1-12, col.4, lines 45-59, teaches antivirus software updates are pushed from a central server to local computers through the Internet. Hodges further teaches the use of IP address assigned to each local computers. Since Reber teaches assigning a priority to each address. The combination of Reber and Hodges teaches assigning priority to computers.

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Hodges of pushing updates to computers to assign priority to computers as taught by Reber in order to push updates to multiple computers based on priority to provide multiple computers with information.

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Hodges and Reber in order to provide a method to prioritize interaction with computer network resources based on priority levels(Reber, col.1, lines 65-67).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571)272-3941. The examiner can normally be reached on 9 A.M.-12 P.M. and 1 -6 P.M. Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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ZARNI MAUNG
SUPERVISORY PATENT EXAMINER